

(vii) The Debtors Have Satisfied the Procedural Requirements Regarding Authority to Use Cash Collateral and to Obtain Credit

71. Bankruptcy Rule 4001(b)(1) sets forth the procedural requirements for use of cash collateral and states:

A motion for authorization to use cash collateral shall be made in accordance with Rule 9014 and shall be served on any entity that asserts an interest in the cash collateral...the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

Fed. R. Bankr. P. 4001(b)(1).

72. Bankruptcy Rule 4001(c)(1) sets forth the procedural requirements for obtaining credit and states:

A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on...the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by the copy of the agreement.

Fed. R. Bankr. P. 4001(c)(1).

73. The Motion complies with the requirements of Bankruptcy Rules 4001(b)(1) and (c)(1). As set forth below, notice of the Interim Hearing and the relief requested in the Motion has been or will be provided by telephone, overnight delivery, hand delivery or facsimile to (i) the office of the United States Trustee for the Southern District of New York; (ii) counsel to the respective agents for the Prepetition Credit Facilities; (iii) counsel to the agents for the DIP Lenders; (iv) counsel to the Informal Committee; (v) the indenture trustees under the Notes; (vi) to the extent practicable and to the best of the Debtors' knowledge, the holders of other secured claims, liens, encumbrances or interests with respect to property of the Debtors; (vii) the Debtors' 50 largest unsecured creditors on a consolidated basis; (viii) the District Director of Internal Revenue in the Southern District of New York; (ix) the United States Department of Justice; (x) the SEC; and (xi) the Federal Communications Commission. Notice

of the Motion and the Final Hearing will be served following the Interim Hearing as further indicated below.

74. Additionally, Federal Rule of Bankruptcy Procedure 4001(c)(2) provides that:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

The urgent need to preserve the Debtors' businesses and to avoid immediate and irreparable harm to the estates is detailed in this Motion. It is imperative that the Debtors be authorized to obtain authority to borrow funds pursuant to the terms and conditions of the Interim Order and the DIP Credit Agreement pending the Final Hearing on the Motion. Without such interim financing, the Debtors will be unable to continue their business operations, to pay their employees and meet their postpetition obligations. The denial of the Interim DIP Financing would irreparably damage the value of the Debtors' business, to the extreme detriment of the Debtors' estates and their creditors.

75. Accordingly, the Debtors respectfully request that, pending the Final Hearing on this Motion, the Interim Order be entered, and that, thereafter, the Final Order be entered at the Final Hearing.

VII. NOTICE WITH RESPECT TO INTERIM HEARING

76. In accordance with Bankruptcy Rule 4001, the Debtors have provided or will provide notice of the Motion, the Interim Order, the DIP Credit Agreement and the Interim Hearing, whether by telephone, telecopy, overnight delivery service or by hand delivery, to the following parties: (i) the office of the United States Trustee for the Southern District of New York; (ii) counsel to the respective agents for the Prepetition Credit Facilities; (iii) counsel to the

agents for the DIP Lenders; (iv) counsel to the Informal Committee; (v) the indenture trustees under the Notes; (vi) to the extent practicable and to the best of the Debtors' knowledge, the holders of other secured claims, liens, encumbrances or interests with respect to property of the Debtors; (vii) the Debtors' 50 largest unsecured creditors on a consolidated basis; (viii) the District Director of Internal Revenue in the Southern District of New York; (ix) the United States Department of Justice; (x) the SEC; and (xi) the Federal Communications Commission (collectively, the "Initial Notice Parties"). The Debtors respectfully submit that such notice constitutes appropriate and sufficient notice under the exigent circumstances of the Motion.

VIII. NOTICE WITH RESPECT TO THE FINAL HEARING

77. Pursuant to Bankruptcy Rule 4001, within five Business Days after entry of the Interim Order, the Debtors propose to provide a copy of the Interim Order and notice of the Final Hearing by regular mail to each of the Initial Notice Parties and, without duplication, to the following parties: (i) the attorney generals in the states in which the Debtors operate their businesses; (ii) to the extent practicable, the Debtors' landlords; (iii) parties that have filed a request for notices prior to such date; (iv) counsel to any official committee of unsecured creditors appointed in these cases; and (v) to the extent practicable and to the best of the Debtors' knowledge, any additional holders of other secured claims, liens, encumbrances or interests with respect to property of the Debtors identified after the Interim Hearing. Prior to the Final Hearing on the Motion, the Debtors also will provide actual notice of the Motion whether by telephone, telecopy, overnight courier, or by hand delivery, to counsel for any official committee appointed in the Debtors' chapter 11 cases. The cost of providing notice of the Motion and the Final Hearing to all creditors in these chapter 11 cases would be extremely expensive, and would not, in the Debtors' view, confer any substantial benefit on the Debtors, their estates or their creditors, nor would the proposed notice procedure prejudice any third party. Accordingly, the Debtors

respectfully request that any further notice of the Final Hearing and of the Motion, other than as provided herein, be dispensed with and waived.

IX. NO PREVIOUS RELIEF REQUESTED

78. The Debtors have not previously sought the relief requested herein from this Court or any other court.

X. WAIVER OF MEMORANDUM OF LAW

79. Because this Motion presents no novel issues of law, the Debtors request that the Court dispense with the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith and permit the Debtors to rely upon the authorities cited herein.

XI. CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit B, authorizing the relief requested herein, (ii) approve the form and manner of notice of the Interim Hearing and the Final Hearing on this Motion as set forth herein, (iii) schedule the Final Hearing on this Motion and enter the Final Order following the conclusion thereof, and (iv) grant such other and further relief as this Court may deem appropriate.

Dated: June 25, 2002
New York, New York

By: /s/ Randall D. Fisher
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Vice President and General Counsel

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CREDIT AND GUARANTY AGREEMENT

Among
UCA LLC

CENTURY CABLE HOLDINGS, LLC
CENTURY-TCI CALIFORNIA, L.P.
OLYMPUS CABLE HOLDINGS, LLC
PARNASSOS, L.P.

FRONTIERVISION OPERATING PARTNERS, L.P.
ACC INVESTMENT HOLDINGS, INC.,

each a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

as Borrowers,

THE GUARANTORS LISTED ON ANNEX B HERETO

each a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

as Guarantors,

(each to the extent specified herein)

THE LENDERS PARTY HERETO,

JPMORGAN CHASE BANK,

as Administrative Agent

CITICORP USA, INC.

as Syndication Agent

J.P. MORGAN SECURITIES INC.

and

SALOMON SMITH BARNEY INC.

as Joint Bookrunners and Co-Lead Arrangers

CITICORP USA, INC.,

as Collateral Agent

WACHOVIA BANK, N.A.,

as Co-Syndication Agent

and

THE BANK OF NOVA SCOTIA,

FLEET NATIONAL BANK,

BANK OF AMERICA, N.A.

and

GENERAL ELECTRIC CAPITAL CORPORATION,

as Co-Documentation Agents

Dated as of June 25, 2002

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CREDIT AND GUARANTY AGREEMENT, dated as of June 25, 2002, among UCA LLC, CENTURY CABLE HOLDINGS, LLC, CENTURY-TCI CALIFORNIA, L.P., OLYMPUS CABLE HOLDINGS, LLC, PARNASSOS, L.P., FRONTIERVISION OPERATING PARTNERS, L.P., and ACC INVESTMENT HOLDINGS, INC., the GUARANTORS listed on Annex B hereto, each of which is a debtor and debtor-in-possession in a case pending under chapter 11 of the Bankruptcy Code, each of the FINANCIAL INSTITUTIONS from time to time party hereto, JPMORGAN CHASE BANK, as Administrative Agent, CITICORP USA, INC., as Syndication Agent, and J.P. MORGAN SECURITIES INC. and SALOMON SMITH BARNEY INC., as Joint Bookrunners and Co-Lead Arrangers, CITICORP USA, INC., as Collateral Agent, WACHOVIA BANK, N.A., as Co-Syndication Agent, and THE BANK OF NOVA SCOTIA, FLEET NATIONAL BANK, BANK OF AMERICA, N.A. and GENERAL ELECTRIC CAPITAL CORPORATION, as Co-Documentation Agents.

INTRODUCTORY STATEMENT

On June 25, 2002, each Loan Party filed a voluntary petition with the Bankruptcy Court initiating a case under chapter 11 of the Bankruptcy Code, and has continued in the possession of its assets and in the management of its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

The Borrowers have applied to the DIP Lenders for a credit facility to be available to each Borrower as set forth herein.

The proceeds of the credit extended pursuant to the facility will be used only as described in Section 5.08 of this Agreement.

To provide guarantees and security for the repayment of the Loans made to each Borrower, the Reimbursement Obligations with respect to the Letters of Credit issued for the account of any Borrower and the payment of the other Obligations, each Loan Party will provide to the Agents, the Fronting Banks and the DIP Lenders the following (each as more fully described herein):

- (i) from each Guarantor, a guarantee of its Guaranteed Obligations;
- (ii) subject to the Carve-Out, an allowed administrative expense claim in each of the Cases pursuant to Section 364(c)(1) of the Bankruptcy Code having priority over all administrative expenses of the kind specified in, or arising under, any Sections of the Bankruptcy Code (including without limitation Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) or 726 thereof) pursuant to Section 364(c)(1) of the Bankruptcy Code, whether or not such claims or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment;

(iii) subject to the Carve-Out, pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on (x) with respect to any Loan Party other than a Holding Company Guarantor, all unencumbered property of such Loan Party other than Excluded Property and any amounts that cash collateralize any Letter of Credit issued for the account of such Loan Party (if any) or the Unfunded Borrowing Limit of such Loan Party (if any) and (y) with respect to any Loan Party that is a Holding Company Guarantor, all unencumbered Equity Interests (other than Excluded Property) of any direct Subsidiary of such Holding Company Guarantor and all Holding Company Specified Assets of such Holding Company Guarantor;

(iv) subject to the Carve-Out, pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected junior Lien on (x) with respect to any Loan Party other than a Holding Company Guarantor, all property of such Loan Party that is subject to valid and perfected liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Sections 546(b) and 362(b)(18) of the Bankruptcy Code (other than the property (if any) that is subject to any Primed Liens, which Liens shall be primed by the Liens described in clause (iv) below) and (y) with respect to any Loan Party that is a Holding Company Guarantor, its Holding Company Specified Assets that are subject to valid and perfected liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Sections 546(b) and 362(b)(18) of the Bankruptcy Code (other than the property (if any) that is subject to existing Liens that secure obligations (if any) of such Holding Company Guarantor under the Pre-Petition Facility as to which such Holding Company Guarantor is liable, which Liens shall be primed by the Liens described in clause (iv) below); and

(v) subject to the Carve-Out, pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected first priority (subject to Liens permitted by Section 6.01, other than the Primed Liens), senior priming lien on all of the property of such Loan Party that is subject to any of the Primed Liens (including, without limitation, inventory, accounts receivable, property, plant, equipment, patents, copyrights, trademarks, tradenames and other intellectual property and capital stock of subsidiaries), all of which Primed Liens shall be primed by and made subject and subordinate to the perfected first priority senior liens to be granted to the Agents, the Fronting Banks and the DIP Lenders as well as the Permitted Inter-Group Debt Liens.

Accordingly, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINITIONS

SECTION 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"ABR Loan" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article 2.

"Adjusted LIBOR Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the quotient of (a) the LIBOR Rate in effect for such Interest Period divided by (b) a percentage (expressed as a decimal) equal to 100% minus Statutory Reserves. For purposes hereof, the term **"LIBOR Rate"** shall mean the rate (rounded upwards, if necessary, to the next 1/16 of 1%) at which dollar deposits approximately equal in principal amount to such Eurodollar Borrowing and for a maturity comparable to such Interest Period are offered to the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, a Person (a **"Controlled Person"**) shall be deemed to be "controlled by" another Person (a **"Controlling Person"**) if the Controlling Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of the Controlled Person whether by contract or otherwise.

"Administrative Agent" shall mean JPMCB in its capacity as administrative agent under the Loan Documents and its successors in such capacity.

"Agent" shall mean the Administrative Agent, the Syndication Agent, a Co-Lead Arranger, the Collateral Agent, the Co-Syndication Agent, or a Co-Documentation Agent, and **"Agents"** shall mean all of them.

"Agreement" shall mean this Credit and Guaranty Agreement, as the same may from time to time be further amended, modified or supplemented.

"Alternate Base Rate" shall mean, for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. For purposes hereof,

"Prime Rate" shall mean the rate of interest per annum publicly announced from time to time by the Administrative Agent as its Prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective on the date such change is publicly announced. **"Base CD Rate"** shall mean the sum of (a) the quotient of (i) the Three-Month Secondary CD Rate divided by (ii) a percentage expressed as a decimal equal to 100% minus Statutory Reserves and (b) the Assessment Rate. **"Three-Month Secondary CD Rate"** shall mean, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day shall not be a Business Day, the immediately preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(19) during the week following such day), or, if such rate shall not be so reported on such day or such immediately preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day shall not be a Business Day, on the immediately preceding Business Day) by the Administrative Agent from three New York City negotiable certificate of deposit dealers of recognized standing selected by it. **"Federal Funds Effective Rate"** shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Base CD Rate or the Federal Funds Effective Rate or both for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms hereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), or both, of the first sentence of this definition, as appropriate, until the circumstances giving the rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Three-Month Secondary CD Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate, the Three-Month Secondary CD Rate or the Federal Funds Effective Rate, respectively.

"Applicable L/C Fee Rate" shall mean a rate per annum equal to 3.50%.

"Applicable Margin" shall mean, on any date, (i) with respect to any Eurodollar Loan, a rate per annum equal to 3.50%, and (ii) with respect to any ABR Loan, a rate per annum equal to 2.50%.

"Assessment Rate" shall mean for any date the annual rate (rounded upwards, if necessary, to the next 1/100 of 1%) most recently estimated by the Administrative Agent

as the then current net annual assessment rate that will be employed in determining amounts payable by the Administrative Agent to the Federal Deposit Insurance Corporation (or any successor) for insurance by such Corporation (or any successor) of time deposits made in dollars at the Administrative Agent's domestic offices.

"Asset Sale Agreement" shall mean any agreement with respect to the sale, lease or other disposition of any asset of any Loan Party that is (a) approved by the Required DIP Lenders and (b) to the extent required by the Bankruptcy Code, approved by the Bankruptcy Court.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a DIP Lender and an Eligible Assignee, and accepted by the Administrative Agent, substantially in the form of Exhibit A.

"Bankruptcy Code" shall mean The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. § 101, *et seq.*

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States.

"Borrower" shall mean any Several Borrower or any Joint and Several Borrower and, when used with respect to any Loans or Reimbursement Obligations, with respect to any Letters of Credit, shall mean the Borrower to whom such Loans were made or for whose account such Letters of Credit were issued, and **"Borrowers"** shall mean all of them.

"Borrower Group" shall mean each group of Persons consisting of a Borrower and all of the direct and indirect Subsidiaries of the Parent that are identified on Annex B as belonging to such Borrower Group.

"Borrowing" shall mean the incurrence of Loans of a single Type made by DIP Lenders on a single date to a single Borrower and having, in the case of Eurodollar Loans, a single Interest Period (with any ABR Loan made pursuant to Section 2.15 being considered a part of the related Borrowing of Eurodollar Loans).

"Borrowing Limit" shall mean, at any time, with respect to any Borrower Group, (i) prior to the Covenant Addendum Date, the amount set forth on Annex B under the column "Borrowing Limit" opposite such Borrower's name (such Borrower Group's "Initial Borrowing Limit") and (ii) on and after the Covenant Addendum Date, the amount agreed upon between such Borrower and the Initial Majority DIP Lenders,

reduced from time to time pursuant to Sections 2.09 and 2.12. The Initial Borrowing Limit with respect to any Borrower may be increased upon request of such Borrower by an amount not to exceed 20% in the aggregate of such Initial Borrowing Limit as in effect on the date of this Agreement, subject to the consent of the Initial Majority DIP Lenders.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks in the State of New York are required or permitted to close (and, for a Letter of Credit, other than a day on which the Fronting Bank issuing such Letter of Credit is closed); *provided, however*, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits on the London interbank market.

"Capital Expenditures", with respect to each Borrower Group, shall have the meaning set forth in the Covenant Addendum.

"Capitalized Lease" shall mean, as applied to any Person, any lease of property by such Person as lessee that would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Capital Stock" shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

"Carve-Out" shall mean (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under Section 1930(a) of title 28 of the United States Code and (ii) an amount not exceeding \$15,000,000 in the aggregate with respect to all Loan Parties, which amount may be used after the occurrence and during the continuance of an Event of Default, to pay fees or expenses incurred by Loan Parties and any Committee in respect of (A) allowances of compensation for services rendered or reimbursement or expenses awarded by the Bankruptcy Court to the professionals duly retained on behalf of the Loan Parties or any Committee pursuant to an order of the Bankruptcy Court and (B) the reimbursement of expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties (but excluding fees and expenses of third-party professionals employed by such members), and of which amount up to \$500,000 may be applied towards the reasonable fees and disbursements of a Chapter 7 Trustee in any liquidation of a Loan Party pursuant to Chapter 7 of the Bankruptcy Code, pursuant to Section 726 of the Bankruptcy Code; *provided, however*, that such dollar limitation on fees and expenses shall not be reduced by the amount of any compensation and reimbursement of expenses paid prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked or any fees, expenses, indemnities or other amounts paid to the Agents, any Fronting Bank or any DIP Lender and their respective attorneys and agents under any Loan Document or otherwise; and *provided further* that nothing herein shall be

construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and that any cash in any Letter of Credit Account and any other Collateral specified in the Orders as not being subject to the Carve-Out shall not be subject to the Carve-Out.

"Cases" shall mean the Cases under chapter 11 of the Bankruptcy Code of each Loan Party pending in the Bankruptcy Court.

"Cash Management Protocol" means the Cash Management Protocol attached to this Agreement.

"Change of Control" shall mean and be deemed to have occurred upon the occurrence of any of the following events: (i) any Person or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, and regulations promulgated thereunder) shall have acquired beneficial ownership of more than 35% of the outstanding shares of Voting Stock of the Parent, (ii) the board of directors of the Parent shall cease to consist of a majority of Continuing Directors of the Parent, (iii) any Loan Party shall cease to be wholly-owned, directly or indirectly, by the Parent (except as a result of a transaction permitted by Section 6.02 or 6.11 hereof) or, with respect to any Loan Party that is not wholly-owned by the Parent on the date hereof, the Parent shall have a lesser percentage ownership than exists in such Loan Party on the date hereof, (iv) each Guarantor (other than a Holding Company Guarantor) shall cease to be wholly-owned, directly or indirectly, by the Borrower in the Borrower Group to which such Guarantor belongs (except as a result of a transaction permitted by Section 6.02 or 6.11 hereof) or, with respect to any such Guarantor that is not wholly-owned by such Borrower on the date hereof, such Borrower shall have a lesser percentage ownership than exists in such Guarantor on the date hereof, (v) any Loan Party (other than the Parent or a Holding Company Guarantor) shall hold any Equity Interests of a Holding Company Guarantor. **"Voting Stock"** shall mean shares of Capital Stock entitled to vote generally in the election of directors, and **"Continuing Directors"** shall mean the directors of the Parent on the Closing Date and each other director, if, in each case, such other director's nomination for election to the board of directors of the Parent is recommended or effected by at least a majority of the then Continuing Directors. For purposes of clause (i) above, the terms "Person" and "group" shall not include any voting trust or other Person to which Voting Stock is transferred as provided in the Agreement (other than the original transferors of such stock into such voting trust), dated as of May 23, 2002 (the **"Settlement Agreement"**), by and between the Parent and John Rigas, Tim Rigas, James Rigas, Michael Rigas and the entities directly or indirectly owned thereby or any agreement entered into by the Parent pursuant thereto.

"Closing Date" shall mean the date on which this Agreement has been executed and the conditions precedent set forth in Section 4.01 have been satisfied or waived, which date shall occur promptly upon entry of the Interim Order, but not later than 15 days following the Petition Date.

“Co-Documentation Agents” shall mean each of The Bank of Nova Scotia, Fleet National Bank, Bank of America, N.A. and General Electric Capital Corporation, and their respective successors in such capacity.

“Co-Lead Arrangers” shall mean each of JPMSI and SSB, in its capacity as Joint Bookrunner and Co-Lead Arranger under the Loan Documents, and their respective successors in such capacity.

“Co-Syndication Agent” shall mean Wachovia Bank, N.A. in its capacity as co-syndication agent under the Loan Documents, and its successors in such capacity.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean the Collateral as defined in the Security and Pledge Agreement and all other collateral given, pursuant to orders of the Bankruptcy Court or otherwise, as security for or in connection with any of the Obligations.

“Collateral Agent” shall mean CUSA in its capacity as collateral agent under the Loan Documents, and its successors in such capacity.

“Commitment” shall mean, with respect to each DIP Lender, its commitment hereunder in the amount set forth opposite its name on Annex A hereto, or as may subsequently be set forth in the Register from time to time, as the same may be reduced from time to time pursuant to this Agreement.

“Commitment Fee” shall have the meaning set forth in Section 2.19.

“Commitment Fee Rate” shall mean, at any date, the rate per annum set forth below in the applicable row based upon the Utilization that exists on such date:

Utilization	Rate
Utilization <33.3%	1.0%
Utilization ≥ 33.3% but ≤ 66.6%	0.75%
Utilization > 66.6%	0.50%

For purposes of this definition, **“Utilization”** shall mean, at any date, the percentage equivalent of a fraction (i) the numerator of which is the aggregate Outstanding Exposure with respect to all Borrowers and (ii) the denominator of which is the Total Commitments, in each case, at such date.

"Commitment Percentage" shall mean at any time, with respect to each DIP Lender, the percentage obtained by dividing its Commitment at such time by the Total Commitment at such time.

"Committee" shall mean any statutory committee appointed in the Cases.

"Concentration Account" shall have the meaning set forth in Section 5.12.

"Confidential Information" shall mean all material non-public information received from the Loan Parties relating to any Loan Party or their respective businesses, other than any such information that is available to any Agent or any DIP Lender on a non-confidential basis prior to disclosure by the Loan Parties; provided that, in the case of information received from any Loan Party after the date hereof, such information is clearly identified in writing at the time of delivery as confidential.

"Consummation Date" shall mean the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code and which, for purposes of this Agreement, shall be no later than the effective date) of a Reorganization Plan of any Loan Party that is confirmed pursuant to an order of the Bankruptcy Court in the Cases.

"Covenant Addendum" means an addendum to this Agreement executed by the Borrowers and the Initial Majority DIP Lenders and setting forth (i) the financial covenants contemplated by Sections 6.04 and 6.05 and related definitions, as agreed upon between the Borrowers and the Initial Majority DIP Lenders and (ii) such other additional agreements and additional undertakings as the Borrowers and the Initial Majority DIP Lenders shall mutually agree upon.

"Covenant Addendum Date" shall mean the date of execution of the Covenant Addendum.

"Credit Event" shall mean the making of any Loan or the issuance of any Letter of Credit.

"Current SEC Reports" means each Current Report on Form 8-K filed by the Parent with the Securities and Exchange Commission on or after March 28, 2002 and prior to the date of this Agreement.

"CUSA" shall mean Citicorp USA, Inc. and its successors.

"Default" shall mean any Event of Default or any event which upon notice or lapse of time or both would constitute an Event of Default.

"DIP Lender" shall mean any lender with a Commitment hereunder.

"DIP Lender Affiliate" shall mean, (a) with respect to any DIP Lender, (i) an Affiliate of such DIP Lender or (ii) any entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a DIP Lender or an Affiliate of such DIP Lender and (b) with respect to any DIP Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such DIP Lender or by an Affiliate of such investment advisor.

"Dollars" and **"\$"** shall mean lawful money of the United States of America.

"Domestic Subsidiary" means any direct or indirect Subsidiary of any Loan Party now or hereafter created and that is organized under the laws of the United States of America or any state or territory thereof.

"EBITDA", with respect to each Borrower Group, shall have the meaning set forth in the Covenant Addendum.

"Eligible Assignee" shall mean (i) a commercial bank having total assets in excess of \$1,000,000,000; (ii) a finance company, insurance company or other financial institution or fund, in each case acceptable to the Co-Lead Arrangers, which in the ordinary course of business extends credit of the type contemplated herein or buys and/or invests in commercial loans and has total assets in excess of \$200,000,000 and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of ERISA; (iii) a DIP Lender Affiliate; and (iv) any other financial institution satisfactory to the Borrowers (whose approval shall not be unreasonably withheld) and the Co-Lead Arrangers.

"Environmental Lien" shall mean a Lien in favor of any Governmental Authority for (i) any liability under federal or state environmental laws or regulations or (ii) damages arising from or costs incurred by such Governmental Authority in responding, pursuant to applicable Federal or State environmental laws or regulations, to a release or threatened release of a hazardous or toxic waste, substance or constituent, or other substance into the environment.

"Equity Interests" shall mean (i) shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person or (ii) any warrants, options or other rights to acquire such shares or interests.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" shall mean, with respect to any entity, any trade or business (whether or not incorporated) that is under common control with such entity within the meaning of Section 4.14(b) or (c) of the Code and the regulations promulgated and rulings issued thereunder.

"Eurocurrency Liabilities" shall have the meaning assigned thereto in Regulation D issued by the Board, as in effect from time to time.

"Eurodollar Borrowing" shall mean a Borrowing comprised of Eurodollar Loans.

"Eurodollar Loan" shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article 2.

"Event of Default" shall have the meaning set forth in Section 7.01.

"Excluded Property" shall mean: (a) any franchises, licenses or equivalent rights (collectively, **"Franchises"**) as and to the extent the granting of a security interest in any such Franchise would result in the forfeiture, termination, or loss of such Franchise (it being understood that **"Excluded Property"** shall not include any proceeds from the sale or other disposition of any such Franchise), (b) any Equity Interest or Investment Property (as defined in the Security and Pledge Agreement) as and to the extent that the holder of such Equity Interest or Investment Property is prohibited or otherwise restricted in the granting of a security interest with respect to such Equity Interest or Investment Property, as applicable, whether by the organizational documents relating to the entity to which such Equity Interest or Investment Property relates, securityholders' agreement or otherwise (to the extent any such restriction is enforceable) (it being understood that **"Excluded Property"** shall not include any proceeds from the sale or other disposition of, or any dividends or other distributions on, any such Equity Interest or Investment Property), (c) voting Equity Interests in any Foreign Subsidiary that is a direct Subsidiary of a Domestic Subsidiary, to the extent (but only to the extent) required to prevent the Collateral from including more than 66 2/3% of all voting Equity Interests in such Foreign Subsidiary or (d) Equity Interests in any Foreign Subsidiary that is a direct Subsidiary of a Foreign Subsidiary; *provided*, however, that any such asset described in clauses (a) or (b) shall constitute Excluded Property if and for so long as such forfeiture, termination, or loss would occur or such prohibition or restriction applies and, in each case, is not overridden by order of the Bankruptcy Court.

"Federal Funds Effective Rate" shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published on such Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day

for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fees" shall mean collectively the Commitment Fees, Letter of Credit Fees and other fees referred to in Sections 2.18, 2.19 and 2.20.

"First Delivery Date" shall mean, with respect to each Borrower, the date of delivery of the first Monthly Budget with respect to such Borrower.

"Final Order" shall have the meaning set forth in Section 4.02(d).

"Financial Covenant Event of Default" shall mean any Event of Default arising under Section 7.01(c) as a result of a failure by any Borrower to comply with Section 6.04 or Section 6.05.

"Financial Officer" shall mean, with respect to any Loan Party, the chief financial officer, the vice president-finance, the treasurer or the controller of such Loan Party.

"Foreign Subsidiary" shall mean any direct or indirect Subsidiary of any Loan Party now or hereafter created and that is organized under the laws of a jurisdiction other than the United States of America or any State thereof.

"Fronting Bank" shall mean JPMCB or any other DIP Lender, in each case in its capacity as the issuer(s) of Letters of Credit hereunder, and its successors in such capacity as provided for herein. A Fronting Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by an Affiliate of such Fronting Bank, in which case the term "Fronting Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"GAAP" shall mean generally accepted accounting principles applied in accordance with Section 1.02.

"General Cash Collateral Account" shall mean, with respect to any Borrower, the account established by such Borrower under the sole and exclusive control of the Administrative Agent maintained at the office of the Administrative Agent at 270 Park Avenue, New York, NY 10017 designated as the "[Borrower's Name] General Cash Collateral Account" and used solely for the purposes set forth in Section 2.12.

"Governmental Authority" shall mean any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality or any court, in each case whether of the United States or foreign.

“Guaranteed Obligations” shall mean (i) with respect to each Joint and Several Guarantor, all Obligations of any other Loan Party and (ii) with respect to each Several Guarantor, all Obligations of any other Loan Party which belongs to the same Borrower Group as such Several Guarantor.

“Guarantor” shall mean each Joint and Several Guarantor and each Several Guarantor.

“Holding Company Guarantor” shall mean each Person listed in Annex B under the heading “Holding Company Guarantors”.

“Holding Company Specified Assets” shall have the meaning set forth in clause (ii) of Section 2.22(a).

“Incremental Availability Date” shall mean the first date on which each of the conditions set forth in Section 4.03 shall have been satisfied.

“Indebtedness” shall mean, at any time and with respect to any Person, (i) all indebtedness of such Person for borrowed money, (ii) all indebtedness of such Person for the deferred purchase price of property or services (other than property, including inventory, and services purchased, and expense accruals and deferred compensation items arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the ordinary course of business), (iv) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person under leases that have been or should be, in accordance with GAAP, recorded as capital leases, to the extent required to be so recorded, (vi) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities and all obligations of such Person in respect of (x) currency swap agreements, currency future or option contracts and other similar agreements designed to hedge against fluctuations in foreign interest rates and (y) interest rate swap, cap or collar agreements and interest rate future or option contracts; (vii) all Indebtedness referred to in clauses (i) through (vi) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (A) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (B) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss in respect of such Indebtedness, (C) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (D) otherwise to assure a

creditor against loss in respect of such Indebtedness, and (viii) all Indebtedness referred to in clauses (i) through (vii) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“Initial DIP Lenders” shall mean JPMCB, CUSA, Wachovia Bank, N.A., The Bank of Nova Scotia, Fleet National Bank, Bank of America, N.A. and General Electric Capital Corporation.

“Initial Majority DIP Lenders” shall mean, at any time, the Initial DIP Lenders having Commitments in excess of 66 2/3% of the Total Commitment held by the Initial DIP Lenders or, if the Commitments have been terminated in their entirety, holding aggregate Outstanding Exposures of the Initial DIP Lenders with respect to all Borrowers representing in excess of 66 2/3% of the aggregate Outstanding Exposures of the Initial DIP Lenders with respect to all Borrowers; *provided* if at such time no Initial DIP Lenders are DIP Lenders, the “Initial Majority DIP Lenders” shall be the Required DIP Lenders at such time.

“Insufficiency” shall mean, with respect to any Plan, the amount, if any, of its unfunded benefit liabilities within the meaning of Section 4001(a)(18) of ERISA.

“Intellectual Property” shall have the meaning set forth in Section 5.07.

“Intellectual Property Schedule” shall have the meaning set forth in Section 5.07.

“Inter-Group Debt Summary” shall have the meaning set forth in 5.01(n).

“Intercompany Advances” shall mean any loans or advances from one Loan Party to another Loan Party.

“Interim Order” shall have the meaning set forth in Section 4.01(b).

“Interest Payment Date” shall mean (i) as to any Eurodollar Loan, the last day of each consecutive 30 day period running from the commencement of the applicable Interest Period, and (ii) as to all ABR Loans, the last calendar day of each month and the date on which any ABR Loans are refinanced with Eurodollar Loans pursuant to Section 2.11.

“Interest Period” shall mean, as to any Borrowing of Eurodollar Loans, the period commencing on the date of such Borrowing (including as a result of a refinancing of ABR Loans) or on the last day of the preceding Interest Period applicable to such

Borrowing and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is one or three months thereafter, as the relevant Borrower may elect in the related notice delivered pursuant to Sections 2.05(b) or 2.11; *provided, however*, that (i) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, and (ii) no Interest Period shall end later than the Termination Date.

"Investments" shall have the meaning set forth in Section 6.10.

"Joint and Several Borrower" means the Person listed in Annex B under the heading "Joint and Several Borrower Group" and designated as the "Borrower".

"Joint and Several Borrower Group" shall mean any Borrower Group with respect to which the Borrower is a Joint and Several Borrower.

"Joint and Several Guarantor" shall mean (i) each Person (other than a Joint and Several Borrower) which belongs to a Joint and Several Borrower Group and (ii) each Holding Company Guarantor.

"Joint and Several Loan Party" shall mean (i) each Joint and Several Borrower and (ii) each Joint and Several Guarantor.

"JPMCB" shall mean JPMorgan Chase Bank and its successors.

"JPMSI" shall mean J.P. Morgan Securities Inc. and its successors.

"Letter of Credit" shall mean any irrevocable letter of credit issued pursuant to Section 2.02, which letter of credit shall be in such form as may be reasonably approved from time to time by the Administrative Agent and the applicable Fronting Bank.

"Letter of Credit Account" shall mean, with respect to any Borrower, the account established by such Borrower under the sole and exclusive control of the Administrative Agent maintained at the office of the Administrative Agent at 270 Park Avenue, New York, NY 10017 designated as the "[Borrower's Name] Letter of Credit Account" and used solely for the purposes set forth in Sections 2.02(b) and 2.12.

"Letter of Credit Fees" shall mean the fees payable in respect of Letters of Credit pursuant to Section 2.20.

"Letter of Credit Outstandings" shall mean, at any time, with respect to any Borrower, the sum of (i) the aggregate undrawn stated amount of all Letters of Credit

issued for the account of such Borrower then outstanding *plus* (ii) all outstanding Reimbursement Obligations under Letters of Credit issued for the account of such Borrower, in each case at such time.

“Letter of Credit Sublimit” shall mean, at any time, with respect to any Borrower, the lesser of (i) the amount set forth in Annex B under the column “Letter of Credit Sublimit” opposite such Borrower’s name and (ii) such Borrower’s Borrowing Limit at such time.

“Lien” shall mean any mortgage, deed of trust, constructive trust or other trust, pledge, security interest, security agreement, financing statement, consignment or bailment given for purposes of security, indenture, encumbrance, claim, lien or charge of any kind whatsoever (including any conditional sale or other title retention agreement or any lease in the nature thereof).

“Loan” shall have the meaning set forth in Section 2.01.

“Loan Documents” shall mean this Agreement, the Letters of Credit, the Security and Pledge Agreement, and any other instrument or agreement executed and delivered in connection herewith, in each case as the same may be amended, restated, supplemented or replaced from time to time.

“Loan Party” shall mean any Borrower or any Guarantor.

“Long-Term Budget” shall have the meaning set forth in Section 5.01(l).

“Material Adverse Effect” shall mean, with respect to any Loan Party, a material adverse effect on (i) (x) if such Loan Party is a Several Borrower or any Several Guarantor, the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower Group to which such Several Borrower or Several Guarantor belongs, taken as a whole and (y) if such Loan Party is a Joint and Several Borrower, the business, assets, operations, prospects or condition, financial or otherwise of any Borrowing Group taken as a whole, (ii) the ability of such Loan Party or any other Loan Party that is liable with respect to such Loan Party’s Obligations under the Loan Documents to perform any of its obligations under any Loan Documents such that it has a material adverse effect on the ability of the Borrowing Group to which such Loan Party belongs to perform any of its obligations under any Loan Documents or (iii) the rights of or benefits available to any Agent, the Fronting Banks or the DIP Lenders under any Loan Document with respect to such Loan Party or any other Loan Party that is liable with respect to such Loan Party’s Obligations under the Loan Documents.

“Maturity Date” shall mean June 25, 2004.

“Monthly Budget” shall have the meaning set forth in Section 5.01(k).

"Monthly Usage Limit" shall mean, with respect to any Borrower, for any calendar month ending on or after the 120th Day, the percentage with respect to such Borrower set forth in the Covenant Addendum of the maximum projected principal amount of Borrowings and face amount of Letters of Credit to be used by such Borrower as set forth in such Borrower's Monthly Budget for such calendar month.

"Multiemployer Plan" shall mean a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" shall mean a Single Employer Plan, that (i) is maintained for employees of any Loan Party or an ERISA Affiliate and at least one Person other than the Loan Parties and their ERISA Affiliates or (ii) was so maintained and in respect of which any Loan Party or an ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such Plan has been or were to be terminated.

"Net Proceeds" shall mean, with respect to any Reduction Event, (a) the proceeds received in respect thereof including (i) in the case of a casualty, insurance proceeds, and (ii) in the case of a condemnation or similar event, condemnation awards and similar payments, in each case net of (b) (x) all expenses that are directly related to (or the need for which arises as a result of) the Reduction Event, including, but not limited to, related severance costs, taxes payable, brokerage commissions, professional expenses and other similar costs that are directly related to such Reduction Event (it being understood that taxes on overall income and capital gain taxes are not directly related to such Reduction Event) and (y) any amount of such proceeds that, upon the order of the Bankruptcy Court, shall be required to be escrowed or otherwise set aside for the benefit of holders of claims against such Loan Parties other than the Obligations.

"120th Day" means the 120th day after the date of this Agreement.

"Obligations" shall mean all obligations, now or hereafter existing, under this Agreement and the other Loan Documents, including, but not limited to, (a) the due and punctual payment of all principal of and interest on the Loans and the Reimbursement Obligations, (b) the due and punctual payment of the Fees and all other present and future, fixed or contingent, obligations of any Loan Party to the DIP Lenders, the Fronting Banks and any Agent under the Loan Document, (c) all obligations of the Loan Parties, now or hereafter existing, described in clause (f) of Section 6.03 and (d) any amendments, restatements, renewals, extensions or modifications of any of the foregoing.

"Orders" shall mean the Interim Order and the Final Order of the Bankruptcy Court referred to in Sections 4.01(b) and 4.02(d).

“Other Taxes” shall have the meaning set forth in Section 2.17.

“Outstanding Exposure” shall mean, at any time, with respect to any Borrower, the then outstanding aggregate principal amount of the Loans by all DIP Lenders to such Borrower *plus* the then aggregate Letter of Credit Outstandings.

“Outstanding Permitted Inter-Group Debt” shall mean, with respect with any Borrower Group, at any date, the aggregate outstanding principal or face amount of all Permitted Inter-Group Debt of such Borrower and each other Loan Party which belongs to such Borrower’s Borrower Group, as set forth in the Inter-Group Debt Summary most recently delivered by such Borrower on or prior to such date.

“Parent” shall mean Adelphia Communications Corporation, a Delaware corporation, and its successors.

“Parent Group” shall mean the Parent and all of its direct and indirect Subsidiaries.

“PBGC” shall mean the Pension Benefit Guaranty Corporation, or any successor agency or entity performing substantially the same functions.

“Permitted Inter-Group Advance” shall have the meaning set forth in Section 6.10(b).

“Permitted Inter-Group Debt” shall have the meaning set forth in Section 6.10(b).

“Permitted Inter-Group Debt Liens” shall have the meaning set forth in Section 6.10(b).

“Permitted Inter-Group Guarantee” shall have the meaning set forth in Section 6.10(b).

“Permitted Investments” shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within twelve months from the date of acquisition thereof;

(b) without limiting the provisions of paragraph (d) below, investments in commercial paper maturing within six months from the date of acquisition thereof and having, at such date of acquisition, a rating of at least “A-2” or the

equivalent thereof from Standard & Poor's Corporation or of at least "P-2" or the equivalent thereof from Moody's Investors Service, Inc.;

(c) investments in certificates of deposit, banker's acceptances and time deposits (including Eurodollar time deposits) maturing within six months from the date of acquisition thereof issued or guaranteed by or placed with (i) any domestic office of the Administrative Agent or the bank with whom the Borrowers and the Guarantors maintain their cash management system, *provided*, that if such bank is not a DIP Lender hereunder, such bank shall have entered into an agreement with the Administrative Agent pursuant to which such bank shall have waived all rights of setoff and confirmed that such bank does not have, nor shall it claim, a security interest therein or (ii) any domestic office of any other commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000 and is the principal banking subsidiary of a bank holding company having a long-term unsecured debt rating of at least "A-2" or the equivalent thereof from Standard & Poor's Corporation or at least "P-2" or the equivalent thereof from Moody's Investors Service, Inc.;

(d) investments in commercial paper maturing within six months from the date of acquisition thereof and issued by (i) the holding company of the Administrative Agent or (ii) the holding company of any other commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has (A) a combined capital and surplus in excess of \$250,000,000 and (B) commercial paper rated at least "A-2" or the equivalent thereof from Standard & Poor's Corporation or at least "P-2" or the equivalent thereof from Moody's Investors Service, Inc.;

(e) investments in repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any office of a bank or trust company meeting the qualifications specified in clause (c) above; and

(f) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (a) through (e) above.

"Permitted Liens" shall mean (i) Liens imposed by law (other than Environmental Liens and any Lien imposed under ERISA) for taxes, assessments or charges of any Governmental Authority for claims not yet due and payable or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP; (ii) statutory Liens of landlords and Liens of carriers, warehousemen,

mechanics, materialmen and other Liens (other than Environmental Liens and any Lien imposed under ERISA) in existence on the Petition Date or thereafter imposed by law (including, without limitation, valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Sections 546(b) and 362(b)(18) of the Bankruptcy Code) and created in the ordinary course of business; (iii) Liens (other than any Lien imposed under ERISA) incurred or deposits made in the ordinary course of business (including, without limitation, surety bonds and appeal bonds) in connection with workers' compensation, unemployment insurance and other types of social security benefits or to secure the performance of tenders, bids, leases, franchise agreements and other contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations incurred in the ordinary course of business or arising as a result of progress payments under government contracts; (iv) easements (including, without limitation, reciprocal easement agreements and utility agreements), rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other restrictions, charges or encumbrances (whether or not recorded) and interest of ground lessors, that do not materially interfere with the ordinary conduct of the business of any Loan Party or the use thereof by such Loan Party; (v) purchase money Liens (including Capitalized Leases) upon or in any property acquired or held in the ordinary course of business to secure the purchase price of such property or to secure Indebtedness permitted by Section 6.03(g) solely for the purpose of financing the acquisition of such property; (vi) extensions, renewals or replacements of any Lien referred to in paragraphs (i) through (v) above, *provided* that the principal amount of the obligation secured thereby is not increased and that any such extension, renewal or replacement is limited to the property originally encumbered thereby, (vii) Liens approved by the Co-Lead Arrangers in their sole discretion as contemplated by Section 4.03(c), and (viii) Liens of utilities incurred in the ordinary course of business on cables and other property affixed to transmission poles pursuant to pole agreements and pole rental and similar agreements.

"Person" shall mean any natural person, corporation, division of a corporation, partnership, trust, joint venture, association, company, estate, unincorporated organization or government or any agency or political subdivision thereof.

"Petition Date" shall mean June 25, 2002.

"Plan" shall mean a Single Employer Plan or a Multiemployer Plan.

"Prepayment Date" shall mean 45 days after the entry of the Interim Order by the Bankruptcy Court if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 45-day period.

"Pre-Petition Facilities" shall mean each of the credit facilities described in Annex C and **"Pre-Petition Facility"** means any one of them.

"Pre-Petition Lender" shall mean any lender party to a Pre-Petition Facility, and their respective successors and assigns.

"Pre-Petition Liens" shall mean each of the Liens securing any of the pre-petition Indebtedness due to the Pre-Petition Lenders under the Pre-Petition Facilities.

"Pre-Petition Payment" shall mean a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or trade payables or other pre-petition claims against any Loan Party.

"Reduction Event" shall mean (i) any sale, lease, transfer or other disposition of assets of any Loan Party (other than any disposition to any other Loan Party that belongs to the same Borrower Group), (ii) any casualty or other insured damage to any property of any Loan Party, or any taking of any such property under power of eminent domain or by condemnation or similar proceeding, or any transfer of any such property in lieu of a condemnation or similar taking thereof, (iii) the issuance by any Loan Party of any Equity Interest, or the receipt by any Loan Party of any capital contribution, other than any such issuance of an Equity Interest to, or receipt of any such capital contribution from, any other Loan Party which belongs to the same Borrower Group; or (iv) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.03, other than any event described in any of the foregoing clauses so long as the proceeds from any such single event (or series of related events) do not exceed \$100,000.

"Register" shall have the meaning set forth in section 10.03(d).

"Reimbursement Obligations" shall mean, with respect to each Borrower, at any time, all obligations of such Borrower to reimburse each Fronting Bank for amounts paid by it in respect of drawings under Letters of Credit issued by such Fronting Bank for the account of such Borrower.

"Reorganization Plan" shall mean a plan of reorganization in any of the Cases.

"Required DIP Lenders" shall mean, at any time, DIP Lenders having Commitments in excess of 50% of the Total Commitment or, if the Commitments have been terminated in their entirety, holding aggregate Outstanding Exposures with respect to all Borrowers representing in excess of 50% of the aggregate Outstanding Exposures with respect to all Borrowers.

"SEC Reporting Date" means the first date after the date of effectiveness of this Agreement on which the Parent files a Form 10-Q or Form 10-K with the Securities and Exchange Commission (regardless of whether such filing is with respect to a period ended prior to or after the date of effectiveness of this Agreement).

"Security and Pledge Agreement" shall have the meaning set forth in Section 4.01(c).

"Several Borrower" shall mean each Person listed in Annex B as a Borrower other than the "Joint and Several Borrower".

"Several Borrower Group" shall mean each Borrower Group with respect to which the Borrower is a Several Borrower.

"Several Guarantor" shall mean each Person (other than a Several Borrower) which belongs to a Several Borrower Group.

"Several Loan Party" shall mean each Several Borrower and each Several Guarantor.

"Single Employer Plan" shall mean a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (i) is maintained for employees of any Borrower or an ERISA Affiliate or (ii) was so maintained and in respect of which any Borrower could have liability under Section 4069 of ERISA in the event such Plan has been or were to be terminated.

"SSB" shall mean Salomon Smith Barney Inc. and its successors.

"Statutory Reserves" shall mean on any date the percentage (expressed as a decimal) established by the Board and any other banking authority that is (i) for purposes of the definition of Base CD Rate, the then stated maximum rate of all reserves (including, but not limited to, any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City, for new three month negotiable nonpersonal time deposits in dollars of \$100,000 or more or (ii) for purposes of the definition of Adjusted LIBOR Rate, the then stated maximum rate for all reserves (including but not limited to any emergency, supplemental or other marginal reserve requirements) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency Liabilities (or any successor category of liabilities under Regulation D issued by the Board, as in effect from time to time). Such reserve percentages shall include, without limitation, those imposed pursuant to said Regulation. The Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in such percentage.

"Stop Issuance Notice" shall have the meaning set forth in Section 2.02(b).

"Subsidiary" means, with respect to any Person (herein referred to as the "parent"), a corporation, partnership, limited liability company or other entity (whether now existing or hereafter organized) of which shares of stock or other ownership interest having ordinary voting power (other than stock or such other ownership interests having

such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by the parent. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrowers.

"Super-Majority DIP Lenders" shall have the meaning set forth in Section 10.10(b).

"Superpriority Claim" shall mean a claim against any Loan Party in any of the Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any Sections of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c) and/or 726 thereof), whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment.

"Syndication Agent" shall mean SSB in its capacity as Syndication Agent under the Loan Documents, and its successors in such capacity.

"Taxes" shall have the meaning set forth in Section 2.17.

"Termination Date" shall mean the earliest to occur of (i) the Prepayment Date, (ii) the Maturity Date, (iii) the Consummation Date and (iv) the acceleration of the Loans and the termination of the Commitments in accordance with the terms hereof.

"Termination Event" shall mean, with respect to any Loan Party or ERISA Affiliate (i) a "reportable event", as such term is described in Section 4043 of ERISA and the regulations issued thereunder (other than a "reportable event" not subject to the provision for 30-day notice to the PBGC under Section 4043 of ERISA or such regulations and a "reportable event" under PBGC Regulation 4043.35) or an event described in Section 4068 of ERISA excluding events described in Section 4043(c)(9) of ERISA or PBGC Regulations 4043.21 and 4043.23, or (ii) the withdrawal of any Borrower or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a "substantial employer", as such term is defined in Section 4001(c) of ERISA, or the incurrence of liability by any Loan Party or any ERISA Affiliate under Section 4064 of ERISA upon the termination of a Multiple Employer Plan, or (iii) providing notice of intent to terminate a Plan pursuant to Section 4041(c) of ERISA or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or (iv) the institution of proceedings to terminate a Plan by the PBGC under Section 4042 of ERISA or (v) any other event or condition (other than the commencement of the Cases and the failure to have made any contribution accrued as of the Petition Date but not paid) that would reasonably be expected to constitute grounds under Section 4042 of

ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the imposition of any liability under Title IV of ERISA (other than for the payment of premiums to the PBGC).

"Total Commitment" shall mean, at any time, the sum of all the Commitments at such time.

"Transferee" shall have the meaning set forth in Section 2.17.

"True-Up Event of Default" shall mean, with respect to any Borrower Group, an Event of Default arising under Section 7.01(c) as a result of a failure by any Borrower to comply with the provisions of Section 6.10(d) at any time or date on which compliance therewith is required pursuant to the terms of Section 6.10(d).

"Type" when used in respect of any Loan or Borrowing shall refer to the Rate of interest by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, **"Rate"** shall mean the Adjusted LIBOR Rate and the Alternate Base Rate.

"Unfunded Borrowing Limit" shall mean, at any date, with respect to any Borrower, an amount equal to (i) such Borrower's Borrowing Limit as in effect on such date, after giving effect to any reduction thereof on such date pursuant to Section 2.12 minus (ii) the Outstanding Exposure of such Borrower on such date (iii) minus the aggregate amount of cash and cash equivalents on deposit in such Borrower's Unfunded Borrowing Limit Account on such date.

"Unfunded Borrowing Limit Account" shall mean, with respect to any Borrower, the account established by such Borrower under the sole and exclusive control of the Administrative Agent maintained at the office of the Administrative Agent at 270 Park Avenue, New York, NY 10017 designated as the "[Borrower's Name] Unfunded Borrowing Limit Account" and used solely for the purposes set forth in Section 2.12.

"Unused Total Commitment" shall mean, at any time, the Total Commitment minus the aggregate Outstanding Exposure with respect to all Borrowers, in each case at such time.

"Withdrawal Liability" shall have the meaning given such term under Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Terms Generally. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Sections, Exhibits and Schedules shall be deemed references to Sections of, and Exhibits and Schedules to, this Agreement unless the

context shall otherwise require. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that for purposes of determining compliance with any covenant set forth in Section 6.04 or 6.05, such terms shall be construed in accordance with GAAP as specified in the Covenant Addendum.

ARTICLE 2 AMOUNT AND TERMS OF CREDIT

SECTION 2.01. *Commitments of the DIP Lenders.*

(a) Upon the terms and subject to the conditions herein set forth (including, without limitation, the provisions of Section 2.26 and Article 4) each DIP Lender, severally and not jointly with the other DIP Lenders, agrees to make loans (each a “Loan” and collectively, the “Loans”) to each Borrower at any time and from time to time during the period commencing on the date hereof and ending on the Termination Date; *provided that*, after giving effect to any such Loan, (i) the Outstanding Exposure with respect to such Borrower does not exceed such Borrower’s Borrowing Limit and (ii) the Outstanding Exposure with respect to all Borrowers does not exceed the Total Commitment. Loans made pursuant to this subsection (a) may be repaid and reborrowed in accordance with the provisions of this Agreement.

(b) Each Borrowing shall be funded by the DIP Lenders *pro rata* in accordance with their respective Commitments; *provided, however*, that the failure of any DIP Lender to make any Loan shall not in itself relieve the other DIP Lenders of their obligations to lend.

SECTION 2.02. *Letters of Credit.*

(a) Upon the terms and subject to the conditions herein set forth, each Borrower may request a Fronting Bank, at any time and from time to time after the date hereof and prior to the Termination Date, to issue, and subject to the terms and conditions contained herein, and so long as no Stop Issuance Notice is in effect, such Fronting Bank shall issue, for the account of such Borrower, one or more Letters of Credit for the uses specified in Section 5.08; *provided that* after giving effect to such issuance (i) the Outstanding Exposure with respect to such Borrower does not exceed such Borrower’s Borrowing Limit, (ii) the Outstanding Exposure with respect to all Borrowers does not exceed the Total Commitment and (iii) the Letter of Credit Outstandings with respect to such Borrower do not exceed such Borrower’s Letter of Credit Sublimit. To the extent the letter of credit facility hereunder is used to issue Letters of Credit in support of surety or performance bonds and similar obligations, each Borrower shall obtain a separate Letter of Credit, or be liable with respect to, an amount

that is commensurate with the benefit to be received by such Borrower as a result of the transactions supported by such surety bonds or similar obligations.

(b) If the Required DIP Lenders determine at any time that the conditions set forth in Section 4.02 would not be satisfied in respect of a Credit Event at such time, then the Required DIP Lenders may request that the Administrative Agent issue a "Stop Issuance Notice", and the Administrative Agent shall issue such notice to each Fronting Bank. Such Stop Issuance Notice shall be withdrawn upon a determination by the Required DIP Lenders that the circumstances giving rise thereto no longer exist. No Letter of Credit shall be issued while a Stop Issuance Notice is in effect. The Required DIP Lenders may request issuance of a Stop Issuance Notice only if there is a reasonable basis therefor, and shall consider reasonably and in good faith a request from a Borrower for withdrawal of the same on the basis that the conditions in Section 4.02 are satisfied; *provided* that the Administrative Agent and the Fronting Banks may and shall conclusively rely on any Stop Issuance Notice while it remains in effect.

(c) No Letter of Credit shall expire later than 10 days prior to the Maturity Date.

(d) Each Borrower shall pay to each Fronting Bank, in addition to such other fees and charges as are specifically provided for in Section 2.20 hereof, such fees and charges in connection with the issuance and processing of the Letters of Credit issued by such Fronting Bank for the account of such Borrower as are customarily imposed by such Fronting Bank from time to time in connection with letter of credit transactions.

(e) Drafts drawn under each Letter of Credit shall be reimbursed by the Borrower in Dollars not later than the first Business Day following the date of draw and shall bear interest from the date of draw until the first Business Day following the date of draw at a rate per annum equal to the Alternate Base Rate *plus* the Applicable Margin and thereafter until reimbursed in full at a rate per annum equal to the Alternate Base Rate *plus* the Applicable Margin *plus* 2% (computed on the basis of the actual number of days elapsed over a year of 360 days). The Borrower shall effect such reimbursement (x) if such draw occurs prior to the Termination Date applicable to such Letter of Credit, in cash or through a Borrowing or (y) if such draw occurs on or after the Termination Date, in cash.

(f) Immediately upon the issuance of any Letter of Credit by any Fronting Bank, such Fronting Bank shall be deemed to have sold to each DIP Lender other than such Fronting Bank and each such other DIP Lender shall be deemed unconditionally and irrevocably to have purchased from such Fronting Bank, without recourse or warranty, an undivided interest and participation, to the extent of such DIP Lender's Commitment Percentage, in such Letter of Credit, each drawing thereunder and the Obligations of the Borrower and the Guarantors under this Agreement with respect thereto. Upon any change in the Commitments pursuant to Section 10.03, it is hereby

agreed that with respect to all Letter of Credit Outstandings, there shall be an automatic adjustment to the participations hereby created to reflect the new Commitment Percentages of the assigning and assignee DIP Lenders. Any action taken or omitted by a Fronting Bank under or in connection with a Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such Fronting Bank any resulting liability to any other DIP Lender.

(g) In the event that a Fronting Bank makes any payment under any Letter of Credit and the Borrower shall not have reimbursed such amount in full to such Fronting Bank pursuant to this Section, the Fronting Bank shall promptly notify the Administrative Agent, which shall promptly notify each DIP Lender of such failure, and each such DIP Lender shall promptly and unconditionally pay to the Administrative Agent for the account of such Fronting Bank the amount of such DIP Lender's Commitment Percentage of such unreimbursed payment in Dollars and in same day funds. If such Fronting Bank so notifies the Administrative Agent, and the Administrative Agent so notifies the DIP Lenders prior to 11:00 a.m. (New York City time) on any Business Day, each of the DIP Lenders shall make available to such Fronting Bank such DIP Lender's Commitment Percentage of the amount of such payment on such Business Day in same day funds. If and to the extent such DIP Lender shall not have so made its Commitment Percentage of the amount of such payment available to such Fronting Bank, such DIP Lender agrees to pay to such Fronting Bank, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such Fronting Bank at the Federal Funds Effective Rate. The failure of any DIP Lender to make available to the Fronting Bank its Commitment Percentage of any payment under any Letter of Credit shall not relieve any other DIP Lender of its obligation hereunder to make available to the Fronting Bank its Commitment Percentage of any payment under any Letter of Credit on the date required, as specified above, but no DIP Lender shall be responsible for the failure of any other DIP Lender to make available to such Fronting Bank such other DIP Lender's Commitment Percentage of any such payment. Whenever a Fronting Bank receives a payment of a Reimbursement Obligation as to which it has received any payments from DIP Lenders pursuant to this paragraph, such Fronting Bank shall pay to each DIP Lender which has paid its Commitment Percentage thereof, in Dollars and in same day funds, an amount equal to such DIP Lender's Commitment Percentage thereof.

SECTION 2.03. *Issuance.* Whenever a Borrower desires a Fronting Bank to issue a Letter of Credit, it shall give to such Fronting Bank and the Administrative Agent at least two Business Days' prior written (including telegraphic, telex, facsimile or cable communication) notice (or such shorter period as may be agreed upon by the Administrative Agent, such Borrower and such Fronting Bank) specifying the date on which the proposed Letter of Credit is to be issued (which shall be a Business Day), the stated amount of the Letter of Credit so requested, the conditions for the drawing

thereof, the expiration date of such Letter of Credit and the name and address of the beneficiary thereof.

SECTION 2.04. *Nature of Letter of Credit Obligations Absolute.* The obligations of the Borrower to reimburse the DIP Lenders for drawings made under any Letter of Credit shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, setoff, defense or other right that such Borrower or any Guarantor may have at any time against a beneficiary of any Letter of Credit or against any of the DIP Lenders, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; (iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by a Fronting Bank of any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit; (v) any other circumstance or happening whatsoever, that is similar to any of the foregoing; or (vi) the fact that any Event of Default shall have occurred and be continuing.

SECTION 2.05. *Making of Loans.*

(a) Except as contemplated by Section 2.10, Loans shall be either ABR Loans or Eurodollar Loans as the relevant Borrower may request subject to and in accordance with this Section, *provided* that all Loans made to a single Borrower pursuant to the same Borrowing shall, unless otherwise specifically provided herein, be Loans of the same Type. Each DIP Lender may fulfill its Commitment with respect to any Eurodollar Loan or ABR Loan by causing any lending office of such DIP Lender to make such Loan; *provided* that any such use of a lending office shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Subject to the other provisions of this Section and the provisions of Section 2.11, Borrowings of Loans of more than one Type may be incurred at the same time, *provided* that no more than ten (10) Borrowings of Eurodollar Loans may be outstanding at any time.

(b) The relevant Borrower shall give the Administrative Agent (x) at least three (3) Business Days' prior notice for each Borrowing of Eurodollar Loans and (y) same day notice for each Borrowing of ABR Loans; such notice shall be irrevocable and shall specify (x) the amount of such Borrowing (which shall not be less than \$5,000,000 or an integral multiple of \$100,000 in excess thereof in the case of Eurodollar Loans and not less than \$1,000,000 or an integral multiple of \$500,000 in excess thereof in the case of ABR Loans), (y) the date of such Borrowing (which shall be a Business Day) and (z) the disbursement instructions for such Borrowing. Such notice, to be effective, must be received by the Administrative Agent not later than (1) 12:00 noon, New York City time, on the third Business Day preceding the date on which such Borrowing is to be made, in

the case of Eurodollar Loans and (2) 10:00 A.M., New York City time, on the day such Borrowing is to be made, in the case of ABR Loans, except as provided in the last sentence of this Section 2.05(b). Such notice shall specify whether the Borrowing then being requested is to be a Borrowing of ABR Loans or Eurodollar Loans. If no election is made as to the Type of Loan, such notice shall be deemed a request for Borrowing of ABR Loans. The Administrative Agent shall promptly notify each DIP Lender of its proportionate share of such Borrowing, the date of such Borrowing, the Type of Borrowing or Loans being requested and the Interest Period or Interest Periods applicable thereto, as appropriate. On the borrowing date specified in such notice, each DIP Lender shall make its share of the Borrowing available at the office of the Administrative Agent at 270 Park Avenue, New York, NY 10017, no later than 12:00 noon, New York City time, in immediately available funds. Upon receipt of the funds made available by the DIP Lenders to fund any borrowing hereunder, the Administrative Agent shall disburse such funds in the manner specified in the notice of borrowing delivered by the Borrower.

SECTION 2.06. *Repayment of Loans; Evidence of Debt.*

(a) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each DIP Lender the then unpaid principal amount of each Loan made to such Borrower on the Termination Date.

(b) Each DIP Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such DIP Lender resulting from each Loan made by such DIP Lender to such Borrower, including the amounts of principal and interest payable and paid by such Borrower to such DIP Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Borrower and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the relevant Borrower to each DIP Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the DIP Lenders in respect of the Loans and each DIP Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any DIP Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans made to such Borrower in accordance with the terms of this Agreement.

(e) Any DIP Lender may request that Loans made by it to any Borrower be evidenced by a promissory note of such Borrower. In such event, the relevant Borrower shall execute and deliver to such DIP Lender a promissory note payable to the order of such DIP Lender (or, if requested by such DIP Lender, to such DIP Lender and its registered assigns) in the form attached hereto as Exhibit B. Thereafter, the Loans made to such Borrower and evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.03) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.07. *Interest on Loans.*

(a) Subject to the provisions of Section 2.08, each ABR Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Alternate Base Rate *plus* the Applicable Margin.

(b) Subject to the provisions of Section 2.08, each Eurodollar Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBOR Rate for such Interest Period in effect for such Borrowing *plus* the Applicable Margin.

(c) Accrued interest on all Loans shall be payable in arrears on each Interest Payment Date applicable thereto, at maturity (whether by acceleration or otherwise), after such maturity on demand and (with respect to Eurodollar Loans) upon any repayment or prepayment thereof (on the amount repaid or prepaid).

SECTION 2.08. *Default Interest.* If any Borrower or any Guarantor with respect to such Borrower, as the case may be, shall default in the payment of the principal of or interest on any Loan made to such Borrower or in the payment of any other amount becoming due hereunder (including, without limitation, the reimbursement pursuant to Section 2.02(e) of any draft drawn under a Letter of Credit issued for the account of such Borrower), whether at stated maturity, by acceleration or otherwise, such Borrower or such Guarantor, as the case may be, shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to (x) in the case of Borrowings consisting of Eurodollar Loans, the Adjusted LIBOR Rate in effect for such Borrowing *plus* the Applicable Margin *plus* 2%, (y) in the case of Borrowings consisting of ABR Loans, the Alternate Base Rate in effect for such Borrowing *plus* the Applicable Margin *plus* 2% and (z) in the case of all other amounts, the Alternate Base Rate *plus* 2%.

SECTION 2.09. *Optional Termination or Reduction of Commitment.* (a) Upon at least two Business Days' prior written notice to the Administrative Agent, the Borrowers may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Unused Total Commitment.

(b) Each such reduction of the Commitments shall be in the principal amount of \$5,000,000 or any integral multiple of \$1,000,000 in excess thereof and shall be applied on a pro rata basis to each DIP Lender's Commitment. Simultaneously with each reduction or termination of the Unused Total Commitment, the Borrowers shall pay to the Administrative Agent for the account of each DIP Lender the Commitment Fee accrued on the amount of the Commitment of such DIP Lender so terminated or reduced through the date thereof.

SECTION 2.10. *Alternate Rate of Interest.* In the event, and on each occasion, that on the day two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Loan, the Administrative Agent shall have determined (which determination shall be conclusive and binding upon each of the Borrowers absent manifest error) that reasonable means do not exist for ascertaining the applicable Adjusted LIBOR Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or telegraphic notice of such determination to each of the Borrowers and the DIP Lenders, and any request by any Borrower for a Borrowing of Eurodollar Loans (including pursuant to a refinancing with Eurodollar Loans) pursuant to Section 2.05 or 2.11 shall be deemed a request for a Borrowing of ABR Loans. After such notice shall have been given and until the circumstances giving rise to such notice no longer exist, each request for a Borrowing of Eurodollar Loans shall be deemed to be a request for a Borrowing of ABR Loans.

SECTION 2.11. *Refinancing of Loans.* Each Borrower shall have the right, at any time, on three Business Days' prior irrevocable notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative Agent not later than 1:00 p.m., New York City time, on the third Business Day preceding the date of any refinancing), (x) to refinance (without the satisfaction of the conditions set forth in Article 4 as a condition to such refinancing) any outstanding Borrowing or Borrowings of Loans of one Type (or a portion thereof) made to such Borrower with a Borrowing of Loans of the other Type to such Borrower or (y) to continue an outstanding Borrowing of Eurodollar Loans for an additional Interest Period, subject to the following:

(a) as a condition to the refinancing of ABR Loans with Eurodollar Loans and to the continuation of Eurodollar Loans for an additional Interest Period, no Event of Default shall have occurred and be continuing at the time of such refinancing (other than (x) a Financial Covenant Event of Default with respect to a Borrower Group other than the Borrower Group to which the Borrower that has borrowed the Loans proposed to be refinanced belongs or (y) a True-Up Event of Default with respect to a single test date or time with respect to

a single Borrower Group other than the Borrower Group to which the Borrower that has borrowed the Loans proposed to be refinanced belongs);

(b) if less than a full Borrowing of Loans shall be refinanced, such refinancing shall be made pro rata among the DIP Lenders in accordance with the respective principal amounts of the Loans comprising such Borrowing held by such DIP Lenders immediately prior to such refinancing;

(c) the aggregate principal amount of Loans being refinanced shall be at least \$1,000,000, *provided* that no partial refinancing of a Borrowing of Eurodollar Loans shall result in the Eurodollar Loans remaining outstanding pursuant to such Borrowing being less than \$1,000,000 in aggregate principal amount;

(d) each DIP Lender shall effect each refinancing by applying the proceeds of its new Eurodollar Loan or ABR Loan, as the case may be, to its Loan being refinanced;

(e) the Interest Period with respect to a Borrowing of Eurodollar Loans effected by a refinancing or in respect to the Borrowing of Eurodollar Loans being continued as Eurodollar Loans shall commence on the date of refinancing or the expiration of the current Interest Period applicable to such continuing Borrowing, as the case may be;

(f) a Borrowing of Eurodollar Loans may be refinanced only on the last day of an Interest Period applicable thereto; and

(g) each request for a refinancing with a Borrowing of Eurodollar Loans that fails to state an applicable Interest Period shall be deemed to be a request for an Interest Period of one month.

In the event that a Borrower shall not give notice to refinance any Borrowing of Eurodollar Loans made to such Borrower, or to continue such Borrowing as Eurodollar Loans, or shall not be entitled to refinance or continue such Borrowing as Eurodollar Loans, in each case as provided above, such Borrowing shall automatically be refinanced with a Borrowing of ABR Loans at the expiration of the then-current Interest Period. The Administrative Agent shall, after it receives notice from any Borrower, promptly give each DIP Lender notice of any refinancing, in whole or part, of any Loan made by such DIP Lender.

SECTION 2.12. *Reduction Events.*

(a) (i) On any date of receipt of any Net Proceeds in respect of any Reduction Event by any Several Loan Party:

(x) an aggregate amount equal to the amount of such Net Proceeds shall be applied by the Borrower in the Several Borrower Group to which such Several Loan Party belongs as follows:

first, to repay the outstanding Loans (if any) of such Borrower, until such Loans have been repaid in full;

second, to cash collateralize the Letters of Credit (if any) issued for the account of such Borrower by making a deposit in its Letter of Credit Account, until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Letter of Credit Outstandings;

third, to make a deposit in the Unfunded Borrowing Limit Account of such Borrower, until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Unfunded Borrowing Limit;

fourth, to repay pro rata (on the basis of outstanding principal amount) any Permitted Inter-Group Debt owed or guaranteed by any Loan Party in the Several Borrower Group to which such Several Loan Party belongs; and

fifth, to make a deposit in an amount equal to the balance to the General Cash Collateral Account of such Borrower;

provided that if the Net Proceeds in respect of any Reduction Event by any Several Loan Party are less than \$1,000,000, such reduction shall be made upon receipt of Net Proceeds by such Several Loan Party or any other Several Loan Party which belongs to the same Several Borrower Group such that, together with all other such proceeds received by Several Loan Parties which belong to such Several Borrower Group and have not previously applied pursuant to this Section 2.12(a)(i)(x), aggregate Net Proceeds are equal to at least \$1,000,000;

(y) the Borrowing Limit of the Several Borrower which belongs to the same Several Borrower Group as the Several Loan Party which has received such Net Proceeds shall be reduced by an amount to be determined by the Initial Majority DIP Lenders in their reasonable discretion after consultation with such Several Borrower; and

(z) the Total Commitment will be reduced by an amount equal to the aggregate amount of the repayments and cash collateralizations made pursuant to clauses *first* and *second* of paragraph (x) of this Section 2.12(a)(i).

(ii) On any date of receipt of any Net Proceeds in respect of any Reduction Event by any Joint and Several Loan Party:

(x) an aggregate amount equal to the amount of such Net Proceeds shall be applied by the Borrower in the Joint and Several Group to which such Joint and Several Loan Party belongs as follows:

first, to repay the outstanding Loans (if any) of such Borrower, until such Loans have been repaid in full;

second, to cash collateralize pro rata on the Letters of Credit (if any) issued for the account of such Borrower, by making a deposit in its Letter of Credit Account, until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Letter of Credit Outstandings;

third, to make a deposit in the Unfunded Borrowing Limit Account of such Borrower until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Unfunded Borrowing Limit;

fourth, to repay (on a pro rata basis) the outstanding Loans (if any) of all other Borrowers, until such Loans have been repaid in full;

fifth, to cash collateralize pro rata the Letters of Credit (if any) issued for the account of all other Borrowers, by making a deposit in each Letter of Credit Account, until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Letter of Credit Outstandings;

sixth, to make a deposit with the Unfunded Borrowing Limit Account of each other Borrower until the amount of cash and cash equivalents on deposit therein is at least equal to 110% of its Unfunded Borrowing Limit;

seventh, to repay pro rata (on the basis of outstanding principal amount) any Permitted Inter-Group Debt owed or guaranteed by any Loan Party; and

eighth, to make a deposit in an amount equal to the balance in the General Cash Collateral Account of such Borrower;

provided that if the Net Proceeds in respect of any Reduction Event by any Joint and Several Loan Party are less than \$1,000,000, such reduction shall be made upon receipt of Net Proceeds by any Joint and Several Loan Party such that, together with all other such proceeds received by Joint and Several Loan Parties and not previously applied pursuant to this Section 2.12(a)(ii)(x), aggregate Net Proceeds are equal to at least \$1,000,000.

(y) the Borrowing Limit of each of the Borrowers shall be reduced by an amount to be determined by the Initial Majority DIP Lenders in their reasonable discretion after consultation with the Borrowers; and

(z) the Total Commitment will be reduced by an amount equal to the aggregate amount of the repayment and cash collateralizations made pursuant to clauses *first* and *second* of paragraph (x) of this Section 2.12(a)(ii).

(b) Upon the Termination Date, the Total Commitment shall be terminated in full and each Borrower shall pay its Loans in full and cash collateralize its then outstanding Letters of Credit in an amount equal to 110% of its Letter of Credit Outstandings.

(c) The relevant Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment, cash collateralization or reduction under this Section not later than 12:30 p.m., New York City time, three (3) Business Days before the date of prepayment, cash collateralization or reduction, as the case may be (or, solely if such prepayment will be a prepayment of ABR Loans only, no later than 12:30 p.m., New York City time, on the date of such prepayment). Each such notice shall be irrevocable and shall specify the prepayment or cash collateralization date and, if applicable, each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice, the Administrative Agent shall advise the Fronting Banks and the DIP Lenders of the contents thereof.

SECTION 2.13. *Optional Prepayment of Loans; Reimbursement of DIP Lenders.*

(a) The Borrowers shall have the right at any time and from time to time to prepay any of their respective Loans, in whole or in part, without penalty or premium (but subject to the provisions of Sections 2.13 (b) and 2.13(c)) (x) with respect to Eurodollar Loans, upon at least three (3) Business Days' prior written, telex or facsimile notice to the Administrative Agent and (y) with respect to ABR Loans on the same Business Day if written, telex or facsimile notice is received by the Administrative Agent prior to 1:00 p.m., New York City time, and thereafter upon at least one Business Day's prior written, telex or facsimile notice to the Administrative Agent; *provided, however,* that (i) each such partial prepayment shall be in integral multiples of \$5,000,000 and, in any event not less than \$10,000,000 and (ii) no prepayment of Eurodollar Loans shall be permitted pursuant to this Section 2.13(a) other than on the last day of an Interest Period applicable thereto unless such prepayment is accompanied by the payment of the amounts described in clause (i) of the first sentence of Section 2.13(b), and (iii) no partial prepayment of a Borrowing of Eurodollar Loans shall result in the aggregate principal amount of the Eurodollar Loans remaining outstanding pursuant to such Borrowing being less than \$5,000,000. Each notice of prepayment shall (x) specify the prepayment date, the Borrower making the prepayment and the principal amount of the Loans to be prepaid and, in the case of Eurodollar Loans, the Borrowing or Borrowings pursuant to which made, (y) be irrevocable and (z) commit the relevant Borrower to prepay such Loans by the amount and on the date stated therein. The Administrative Agent shall, promptly after receiving notice from a Borrower hereunder, notify each affected DIP Lender of the principal amount of the Loans held by such DIP

Lender that are to be prepaid, the prepayment date and the manner of application of the prepayment.

(b) The relevant Borrower shall reimburse each DIP Lender on demand for any loss incurred or to be incurred by it in the reemployment of the funds released (i) resulting from any prepayment (for any reason whatsoever, including, without limitation, refinancing with ABR Loans) of any Eurodollar Loan required or permitted under this Agreement, if such Loan is prepaid other than on the last day of the Interest Period for such Loan (including, without limitation, any such prepayment in connection with the syndication of the credit facility evidenced by this Agreement) or (ii) in the event that after such Borrower delivers a notice of borrowing under Section 2.05 in respect of Eurodollar Loans, such Loans are not made on the first day of the Interest Period specified in such notice of borrowing for any reason other than a breach by such DIP Lender of its obligations hereunder. Such loss shall be the amount as reasonably determined by such DIP Lender as the excess, if any, of (A) the amount of interest which would have accrued to such DIP Lender on the amount so paid or not borrowed at a rate of interest equal to the Adjusted LIBOR Rate for such Loan, for the period from the date of such payment or failure to borrow to the last day (x) in the case of a payment or refinancing with ABR Loans other than on the last day of the Interest Period for such Loan, of the then current Interest Period for such Loan, or (y) in the case of such failure to borrow, of the Interest Period for such Loan which would have commenced on the date of such failure to borrow, over (B) the amount of interest which would have accrued to such DIP Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market. Each DIP Lender shall deliver to the relevant Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such DIP Lender.

(c) In the event a Borrower fails to prepay any Loan on the date specified in any prepayment notice delivered pursuant to Section 2.13(a), such Borrower on demand by any DIP Lender shall pay to the Administrative Agent for the account of such DIP Lender any amounts required to compensate such DIP Lender for any loss incurred by such DIP Lender as a result of such failure to prepay, including, without limitation, any loss, cost or expenses incurred by reason of the acquisition of deposits or other funds by such DIP Lender to fulfill deposit obligations incurred in anticipation of such prepayment, but without duplication of any amounts paid under Section 2.13(b). Each DIP Lender shall deliver to the relevant Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such DIP Lender.

(d) Any partial prepayment of Loans by a Borrower pursuant to Sections 2.12 or 2.13 shall be applied to such Borrower's Loans as specified by such Borrower or, in the absence of such specification, as determined by the Administrative Agent, and shall be applied to repay ratably the Loan of the several DIP Lenders included within such Borrowing or Borrowings, *provided that*, in the event such a partial prepayment is applied as determined by the Administrative Agent (in the absence of a specification by

the relevant Borrower), no Eurodollar Loans shall be prepaid pursuant to Section 2.12 to the extent that such Loan has an Interest Period ending after the required date of prepayment unless and until all outstanding ABR Loans and Eurodollar Loans with Interest Periods ending on such date have been repaid in full.

(e) The obligations of the Loan Parties under this Section 2.13 shall survive any termination of this Agreement.

SECTION 2.14. *Reserve Requirements; Change in Circumstances.*

(a) Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to any DIP Lender of the principal of or interest on any Eurodollar Loan made by such DIP Lender or any fees or other amounts payable hereunder (other than changes in respect of Taxes, Other Taxes and taxes imposed on, or measured by, the net income or overall gross receipts or franchise taxes of such DIP Lender by the jurisdiction in which such DIP Lender has its principal office or in which the applicable lending office for such Eurodollar Loan is located or by any political subdivision or taxing authority therein, or by any other jurisdiction or by any political subdivision or taxing authority therein other than a jurisdiction in which such DIP Lender would not be subject to tax but for the execution and performance of this Agreement), or shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by such DIP Lender (except any such reserve requirement that is reflected in the Adjusted LIBOR Rate) or shall impose on such DIP Lender or the London interbank market any other condition affecting this Agreement or the Eurodollar Loans made by such DIP Lender, and the result of any of the foregoing shall be to increase the cost to such DIP Lender of making or maintaining any Eurodollar Loan or to reduce the amount of any sum received or receivable by such DIP Lender hereunder (whether of principal, interest or otherwise) by an amount deemed by such DIP Lender to be material, then the relevant Borrower will pay to such DIP Lender in accordance with paragraph (c) below such additional amount or amounts as will compensate such DIP Lender for such additional costs incurred or reduction suffered.

(b) If any DIP Lender shall have determined that the adoption or effectiveness after the date hereof of any law, rule, regulation or guideline regarding capital adequacy, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any governmental authority, central bank or comparable agency charged with the interpretation of administration thereof, or compliance by any DIP Lender (or any lending office of such DIP Lender) or any DIP Lender's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect

of reducing the rate of return on such DIP Lender's capital or on the capital of such DIP Lender's holding company, if any, as a consequence of this Agreement, the Loans made by such DIP Lender pursuant hereto, such DIP Lender's Commitment hereunder or the issuance of, or participation in, any Letter of Credit by such DIP Lender to a level below that which such DIP Lender or such DIP Lender's holding company could have achieved but for such adoption, change or compliance (taking into account DIP Lender's policies and the policies of such DIP Lender's holding company with respect to capital adequacy) by an amount deemed by such DIP Lender to be material, then from time to time the relevant Borrower shall pay to such DIP Lender such additional amount or amounts as will compensate such DIP Lender or such DIP Lender's holding company for any such reduction suffered.

(c) A certificate of each DIP Lender setting forth such amount or amounts as shall be necessary to compensate such DIP Lender or its holding company as specified in paragraph (a) or (b) above, as the case may be, shall be delivered to the relevant Borrower and shall be conclusive absent manifest error. The relevant Borrower shall pay each DIP Lender the amount shown as due on any such certificate delivered to it within ten (10) days after its receipt of the same. Any DIP Lender receiving any such payment shall promptly make a refund thereof to the relevant Borrower if the law, regulation, guideline or change in circumstances giving rise to such payment is subsequently deemed or held to be invalid or inapplicable.

(d) Failure on the part of any DIP Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of such DIP Lender's right to demand compensation with respect to such period or any other period. The protection of this Section shall be available to each DIP Lender regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

SECTION 2.15. *Change in Legality.*

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if (x) any change after the date of this Agreement in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration thereof shall make it unlawful for a DIP Lender to make or maintain a Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to a Eurodollar Loan or (y) at any time any DIP Lender determines that the making or continuance of any of its Eurodollar Loans has become impracticable as a result of a contingency occurring after the date hereof that adversely affect the London interbank market or the position of such DIP Lender in such market, then, by written notice to the Borrower, such DIP Lender may (i) declare that Eurodollar Loans will not thereafter be made by such DIP Lender hereunder, whereupon any request by a Borrower for a Eurodollar Borrowing shall, as to such DIP Lender only, be deemed a request for an

ABR Loan unless such declaration shall be subsequently withdrawn; and (ii) require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below. In the event any DIP Lender shall exercise its rights under clause (i) or (ii) of this paragraph (a), all payments and prepayments of principal which would otherwise have been applied to repay the Eurodollar Loans that would have been made by such DIP Lender or the converted Eurodollar Loans of such DIP Lender shall instead be applied to repay the ABR Loans made by such DIP Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(b) For purposes of this Section 2.15, a notice to a Borrower by any DIP Lender pursuant to paragraph (a) above shall be effective, if lawful, and if any Eurodollar Loans shall then be outstanding, on the last day of the then-current Interest Period; otherwise, such notice shall be effective on the date of receipt by the relevant Borrower.

SECTION 2.16. *Pro Rata Treatment, Etc.* All payments and repayments of principal and interest in respect of the Loans (except as provided in Sections 2.14 and 2.15) shall be made pro rata among the DIP Lenders in accordance with the Outstanding Exposures, and all payments of Commitment Fees and Letter of Credit Fees (other than those payable to a Fronting Bank) shall be made pro rata among the DIP Lenders in accordance with their Commitments. All payments by a Borrower hereunder shall be (i) net of any tax applicable to such Borrower or any Guarantor and (ii) made in Dollars in immediately available funds at the office of the Administrative Agent at 12:00 noon, New York City time, on the date on which such payment shall be due. Interest in respect of any Loan hereunder shall accrue from and including the date of such Loan to but excluding the date on which such Loan is paid in full or converted to a Loan of a different Type.

SECTION 2.17. *Taxes.*

(a) Any and all payments by a Borrower or any Guarantor hereunder shall be made free and clear of and without deduction for any and all current or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, *excluding* (i) taxes imposed on or measured by the net income or gross receipts of the Administrative Agent or any DIP Lender (or, as contemplated by Section 10.03 hereof, any transferee or assignee thereof, including a participation holder (any such entity being called a "Transferee")) and franchise taxes imposed on the Administrative Agent or any DIP Lender (or Transferee) by the United States or any jurisdiction under the laws of which the Administrative Agent or any DIP Lender (or Transferee) is organized or in which the applicable lending office of any such DIP Lender (or Transferee) or applicable office of the Administrative Agent is located or any political subdivision thereof or by any other jurisdiction or by any political subdivision or taxing